

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ENRIQUE BANUELOS,

Petitioner,

vs.

GREG SMITH, *et al.*,

Respondents.

3:11-cv-00896-LRH-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner.

Respondents have filed a motion for a more definite statement. (ECF No. 9). Petitioner has requested an extension of time to respond to the motion, and a motion to file an amended petition. (ECF No. 15). On November 26, 2012, petitioner filed an amended petition. Good cause appearing, petitioner's motion for an extension and motion to amend is granted. Respondents' motion for a more definite statement is denied as moot.

Additionally, petitioner has filed a motion for the appointment of counsel. (ECF No. 5). The court must appoint counsel where the complexities of the case are such that denial of counsel would amount to a denial of due process, *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980), and where the petitioner is a person of such limited education as to be incapable of presenting his claims in such a way that the court can afford him a fair hearing, *Hawkins v. Bennet*, 423 F.2d 948 (8th Cir. 1970). In the instant case, petitioner cannot speak or write English and he has little education. The petition submitted in this action includes several claims, the contents of which suggest that it may be a relatively complex action. Thus far, petitioner has relied on fellow inmates to draft his petition and

1 amended petition. In the interests of justice, the Court grants petitioner's motion for the appointment
2 of counsel.

3 Therefore, the Federal Public Defender for the District of Nevada (FPD) shall be appointed to
4 represent petitioner. If the FPD is unable to represent petitioner, due to a conflict of interest or other
5 reason, then alternate counsel for petitioner shall be located, and the Court will enter a separate order
6 appointing such alternate counsel. In either case, counsel will represent petitioner in all future
7 federal proceedings relating to this matter (including subsequent actions) and appeals therefrom,
8 unless allowed to withdraw.

9 **IT IS THEREFORE ORDERED** that petitioner's motion for extension of time to respond
10 to the motion for a more definite statement and motion to file an amended petition (ECF No. 15) is
11 **GRANTED**.

12 **IT IS FURTHER ORDERED** that respondents' motion for a more definite statement (ECF
13 No. 9) is **DENIED AS MOOT**.

14 **IT IS FURTHER ORDERED** that petitioner's motion for the appointment of counsel (ECF
15 No. 5) is **GRANTED**. The Federal Public Defender is appointed to represent petitioner.

16 **IT IS FURTHER ORDERED** that the Clerk of Court **SHALL ELECTRONICALLY**
17 **SERVE** the Federal Public Defender for the District of Nevada (FPD) a copy of this order, together
18 with a copy of the amended petition for writ of habeas corpus (ECF No. 16). The FPD shall have
19 **thirty (30) days** from the date of entry of this order to undertake direct representation of petitioner or
20 to indicate to the Court its inability to represent petitioner in these proceedings.

21 **IT IS FURTHER ORDERED** that the Clerk of Court **SHALL SEND** a copy of this order
22 to the CJA Coordinator.

23 **IT IS FURTHER ORDERED** that, after counsel has appeared for petitioner in this case, the
24 Court will issue a scheduling order, which will, among other things, set a deadline for the filing of a
25 second amended petition.

26 DATED this 28th day of January, 2013.



27
28

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE